

IN THE COURT OF COMMON PLEAS OF THE STATE OF DELAWARE
IN AND FOR KENT COUNTY

Tekstrom, Inc.,	:	C.A. No. 03-06-0033
A Delaware Corporation,	:	
	:	
Plaintiff/Counterdefendant,	:	
	:	
vs.	:	
	:	
Sameer K. Savla,	:	
	:	
Defendant/Counterclaimant,	:	
	:	
vs.	:	
	:	
Charan Minhas,	:	
	:	
Individually,	:	
Counterdefendant.	:	

**Upon Defendant Savla' Motion to Compel and
upon Minhas' and Tekstrom's Motion for Protective Order**

Submitted: March 31, 2005

Decided: April 4, 2005

**The Motion to Compel the Production of Documents is granted.
The Motion for a Protective Order is granted.**

Thad J. Bracegirdle, Esquire, Buchanan Ingersoll, PC, The Nemours Building, 1007
North Orange Street, Suite 1110, Wilmington, Delaware 19801, Attorney for
Plaintiff/counterdefendant and Defendant.

John S. Grady, Esquire, Grady & Hampton, LLC, 6 North Bradford Street, Dover,
Delaware 19901, Attorney for Defendant/Counterclaimant.

Trader, J.

This is the Court's decision on Sameer K. Savla's (Savla) motion to compel production of tax returns for the years 2002 and 2003 from Tekstrom and Charan Minhas (Minhas). I hold that there is a triable issue as to Tekstrom and Minhas's liability for punitive damages. Therefore, Savla's motion to compel production of the tax returns is granted subject to a protective order.

In the case before me Salva is not required to make a *prima facie* case that he is entitled to recover punitive damages. *Bryan v. Thos. Best & Sons*, 453 A.2d 107 (Del. Super. 1982). He must only establish that there is a reasonable likelihood that there is a triable issue for punitive damages. *Walbert v. C.F. Schwartz Motor Co.* 1987 WL 9609 (Del.. Super.).

In my opinion of February 10, 2005, I determined that Minhas had a valid cause of action for breach of covenant of good faith and fair dealing, and for intentional infliction of emotional distress. *Tekstrom v. Savla v. Minhas*, C.C.P., C.A. No. 2003-06-0033, Trader, J. (Feb. 10, 2005). Savla also has a claim for fraudulent employment practices and false representation of the employment contract. See the above opinion for a discussion of the facts of the case. Under Delaware law it has been held that a plaintiff can recover punitive damages in certain fraud cases where the fraud is, "gross, oppressive, or aggravated, or where it involves breach of trust or confidence." *Stephenson v. Capano Development*, 462 A.2d 1069 (Del. 1983). Judge Witham has held that "where the defendant's action are similar in nature to that of a tort,' or it appears that that the defendant has committed a 'willful wrong, in the nature of deceit,' the Court will award punitive damages under a contract." *Gillenardo v. Connor Broadcasting Delaware Co.*, 2002 WL 991110 (Del. Super.).

In the case at bar Savla alleges that Minhas and Tekstrom fraudulently induced him to enter into an employment contract. Minhas also threatened Savla with deportation, lawsuit and false criminal charges. On the basis of the above allegations, I conclude that there is a factual basis for Minhas' and Tekstrom's liability for punitive damages.

Court of Common Pleas Civil Rule 26(b)(1) provides for discovery of any non-privileged material relevant to the claim at issue. Evidence of the defendant's financial situation is relevant where the court may award punitive damages. *Bryan ,supra*.

Tekstrom and Minhas contend that tax returns should be produced under seal. I agree. Court of Common Pleas Civil Rule 26(c) provides in pertinent part that "upon motion by a party...and for good cause shown, the Court...may make any order which justice requires to protect a party or person from annoyance, embarrassment, oppression, or undue burden or expense."

Public policy favors the confidentiality of tax returns. *Cleveland v. Cleveland*, 1985 WL 21135, (Del. Ch.). Delaware courts have not hesitated to ensure the confidentiality of tax returns produced in litigation. *Id.* In *Seaford Funding v. M&M Associates*, 1996 WL 255886, (Del. Ch.), Vice-Chancellor Steele, now Chief Justice Steele, stated, "The parties must enter into a confidentiality agreement before Defendants produce the tax returns for Plaintiffs' attorney of record's eyes only." In a case cited in support of Mr. Savla's motion, the court required the financial information be provided to the Court *in camera* and under seal. *Fahey-Hosey v. Capano*, 1999 WL 33117229, (Del. Super.).

Savla has cited a series of cases that do not involve the production of tax returns. In *Ramada Inn v. Drinkhall, Inc.*, 490 A2d 593, 598 (Del. Super. 1985) the general restraint sought by Ramada was rejected by the court, but a protective order was entered. In *Glenmede Trust Co. v. Thompson*, 56 F.3d 476 (3rd Cir. 1995) the attorney-client privilege was waived and the defendant and its law firm were not entitled to a protective order. In *Delaware Solid Waste Authority v. Atlas Sanitation Co.*, 1982 WL 604891, (Del. Com. Pl.) the issue of a protective order was not before the Court.

The motion to compel production of tax returns of Tekstrom and Minhas for the years 2002 and 2003 is granted. The tax returns shall be produced within ten days and only be reviewed by Savla's attorney until further order of the court.

IT IS SO ORDERED.

Merrill C. Trader
Judge